No. 87-600

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, *et al.*,
Petitioners

v.

BEVERLY J. OTTO, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE AMERICAN COUNCIL OF LIFE INSURANCE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE AMERICAN COUNCIL OF LIFE INSURANCE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 36.1 of the Rules of the United States Supreme Court, the American Council of Life Insurance ("Council") respectfully moves this Court for leave to file the attached brief as *amicus curiae* in this case. Counsel for petitioner The Variably Annuity Life Insurance Company ("VALIC") has consented to the filing of the brief. Counsel for the respondent Beverely J. Otto ("Otto") has declined to consent.

The Council has a membership of 646 life insurance companies whose aggregate assets account for approximately 94% of the assets of all United States life insurance companies and 97% of the assets of retirement plans funded through life insurance companies. Most fixed-dollar annuity contracts and some forms of fixed-dollar life insurance (e.g., universal life insurance) contain guarantees of principal and interest and "excess interest" features that have varying degrees of similarity to the guaranteed and excess interest provisions of the fixed annuity contract which was issued by VALIC and held to be a security by the court of appeals. These contracts represent a significant portion of the aggregate life insurance and annuity business in force in the United States today. As of year-end 1986, there were approximately 11 million fixed-dollar individual annuities in force involving present and deferred annual annuity payments of $27 billion. American Council of Life Insurance, *1987 Life Insurance Fact Book Update* at 16 (1987). The Council estimates that, for the same period, there were approximately 38 million persons covered under private pension plans funded by group fixed-dollar annuity contracts. Annual payments into these plans were approximately $36 billion and actual payments made from such plans during the year totaled almost $12 billion. *Id.* at 25. Also as of year-end 1986, there were approximately 11 million universal life insurance policies in force, representing over $864 billion of insurance. *Id.* at 14.

The Council has a substantial interest in this case because the decision below has created considerable uncertainty for its member companies with respect to the applicability of the federal securities laws to fixed-dollar annuity and insurance contracts, and has given rise to serious concerns about the financial health of insurance companies, the interests of consumers, and the continuing availability of life insurance and annuity products.

The Council was permitted (over the objection of Otto) to file a brief as *amicus curiae* in support of VALIC's request for rehearing *en banc* in the court of appeals. The Council has also participated as *amicus curiae* in other federal court proceedings of significance to the life insurance industry.

In light of the fact that respondent's brief in opposition is not due until December 16, respondent will have adequate opportunity to respond to any points raised in the attached brief.

CONCLUSION

For the reasons set forth above and in the attached brief, the Council requests that this Court grant its motion for leave to file the attached brief as *amicus curiae.*

Respectfully submitted,

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